GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL No. 12 of 1991

BETWEEN:

ATTORNEY-GENERAL

Appellant

and

CELIA CLYNE

Respondent

Before: The Hon. Mr. Justice Dennis Byron - President
The Hon. Dr. Nicholas Liverpool - Justice of Appeal
The Hon. Mr. Justice Satrohan Singh - Justice of Appeal

Appearances: Mr. E. Heyliger Q.C. for the Appellant
Mr. A. C. Taylor for the Respondent

1992: November 12;
1993: February 9.

JUDGMENT

BYRON, J. A.

On the 26th day of June 1991 Bristol C.J. declared that: -

"the only person who is in law liable to pay Value Added Tax is a Taxable person according to section 5 of the Value Added Tax Act 1986;"

and made orders for ancillary relief including a refund of the Value Added Tax (hereafter called VAT) paid by the respondent on 5th July 1990 and damages for her unlawful detention.

The Respondent, an Attorney at Law, returned to Grenada at Point Salines Airport with goods (admittedly liable to customs duty) purchased abroad for her personal use. The customs officer assessed duty and surcharge at $285.26 and VAT at $330.10. The respondent protested liability for the VAT on the ground that the items were for her personal use. After a brief period of detention at the airport, she paid the VAT under protest and subsequently issued these proceedings.

In summary the ground of this appeal is that the Court erred in law in failing to appreciate that section 2 of the Value Added Tax Act 1986 applies to the importation of goods into Grenada by any one and that the learned trial Judge was wrong to limit liability to "Taxable Persons".

Section 2 of the Value Added Tax Act 1986 provides that: -

"2 A tax shall be charged on the importation into and sale of goods and services in Grenada. It is to be called the Value Added Tax."

The appellant submitted that this section properly construed means that VAT is to be charged on: -

i. The importation of goods into Grenada

ii. The sale of goods in Grenada, and

iii. The sale of services in Grenada

and that the goods the respondent imported into Grenada were therefore liable to VAT.

Rules of Construction

The respondent relied on a number of authorities to support the well established proposition that no tax can be imposed on a person by an Act of Parliament in the absence of words which show a clear intention to lay a tax burden on him. The language of such an Act must be strictly construed in order to determine if the person sought to be taxed comes within the letter of the law.

See: Partington v Attorney General (1869)L.R. E.@ I. App. H.L. 122
Munro v Commr. of Stamp Duties (1933) 34 S.R. (N.S.W.)
Ormond Investment Co. v Bett (1928) All. E. R. Rep. 709
Tennant v Smith (1892) A.C. 150

In 4th Halsbury Vol.44 para.912 the rule has been stated thus: -

> "It has been emphasized that a Court construing words in a taxing statute must have primary regard to the words themselves, and construe them according to their natural meaning in their context."

Lord Wilberforce reaffirmed the established rules of construing the "clear words" in W.T Ramsey Ltd. v IRC (1982) A.C. 300 at 323: -

> "A subject is only to be taxed upon clear words, not upon 'intendment' or upon the 'equity' of an Act. Any taxing Act of Parliament is to be construed in accordance with this principle. What are 'clear words' is to be ascertained upon normal principles: these do not confine the courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded: see Inland Revenue Commissioners v Wesleyan and General Assurance Society (1946) 30 T.C. 11, at 16 per Lord Greene M.R. and Mangin v Inland Revenue Commissioner (1971) A.C. 739, 746 per Lord Donovan.

Application of the Rules

The question raised by this appeal was whether in order that VAT may be chargeable on goods, they must both be imported into and sold in Grenada, or whether the tax could attach to goods imported into but not sold in Grenada.

It is clear that some goods imported into Grenada are not sold as in the instant case. It is equally clear that some goods sold in Grenada are not imported, for example goods manufactured in Grenada or agricultural produce of Grenada. The respondent submitted that the words of section 2 clearly meant that neither of these categories of goods were subject to the tax, or in the alternative section 2 was ambiguous and could possibly mean so.

There are no words in section 2 which give rise to difficulty. The argument hinged around the grammatical construction of the sentence. I have concluded that the use of the prepositions 'into' and 'in' was an effective device to demonstrate that the sentence was not to be construed conjunctively. I would have found it possible to derive a conjunctive construction if the word 'into' was omitted and the phrase was 'on the importation and sale'. Such a phrase could convey the idea that both importation and sale were conditions which must exist together before the tax was applicable. It seems to me that the construction of the sentence in its present form clearly requires the interpretation that the tax shall be charged on both the "importation into" and "sale in" Grenada. Again, the "and" in the clause "of goods and services" should be disjunctive. Any other interpretation would be absurd because goods and services are so separate and distinct.

Another guide to the interpretation of this section is that if Parliament had intended the VAT to attach to goods imported only if they were sold or for sale, the phrase "sale in" Grenada would have covered sales of goods whether imported or not, making the words "imported into" superfluous.

Some comparative support for this interpretation could be found in the UK Finance Act 1971 which established a VAT. The import of section 2 of the Act under review, as I understand it, seems to have been more elegantly expressed in section 1(i) of the UK Finance Act which reads: -

> "A tax, to be known as value added tax, shall be charged in accordance with the provisions of this Part of this Act on the supply of goods and services in the United Kingdom (including anything treated as such supply) and on the importation of goods into the United Kingdom."

In my view section 2 of the Grenada Act has the identical legislative intent despite its abbreviated expression.

<u>The Context and Scheme of The Act</u>

Section 5 of the Act comes under Part II entitled "The Scope of the Tax". The argument addressed at the trial and the reasons adduced by the learned trial judge concentrated on the effect of section 5 of the Act, several provisions of which were limited to the application of VAT to the sale of goods. It states: -

> "5 The VAT shall apply to all sales of taxable goods and services, provided that the sale is made by a taxable person in the ordinary course of business."

> "5.3 A taxable person is one that makes (or intends to make) taxable sales, and which does so while required to be registered, (see also schedule I), and includes a General Department that engages in trading enterprises."

Scctions 5.4, 5.5, and 5.6 also make provision for the application of the VAT to the sale of goods. These provisions read together make it clear that VAT would not apply where the sale is not in the ordinary course of business or made by a taxable person. The declaration of the learned trial judge was, in effect, an application of section 5.3 of the Act, but as can be seen from its language a "Taxable Person" makes taxable sales, and the concept has no relevance to the importation of goods.

In section 5 itself, provision is made for the application of VAT to the importation of goods.

> "5.1 Where taxable goods are imported, VAT shall be payable as if it were customs duty."

> "5.2 Where imported goods are entered for warehousing, VAT shall be charged and paid at the time of entry for warehousing. The value shall be determined as directed in section 31 hereof."

There are other provisions in the Act which show that provision was made for the collection of VAT on the importation of goods. For example;

Section 3.1 of the Act as amended provides: -

> "The Comptroller of Customs shall be responsible for the collection of VAT at the point of importation and shall account to the Comptroller for those collections."

These latter provisions deal with importation of goods and make specific provision for VAT to be payable as if it were a customs duty. In my view they support the conclusion that VAT is payable on the importation of goods. I am satisfied from a perusal of the Act as a whole that it has imposed a VAT on imports as well as on sales.

We were referred to the Value Added Tax (Amendment) No. 2 Act 1991 which was enacted after the judgment was delivered at first instance. I have reached my decision without having taking into account the provisions of this amendment. But I refer to it as, by its terms, it seems to explain the legislative intent of the principal Act, which would normally be the role of the Court. It states:-

> "2 For the avoidance of doubt, section 5 of the principal Act is repealed and replaced as follows:-
>
> "Subject to this Act, the VAT shall apply to imported goods; and it shall also apply to all sales of taxable goods and services, provided that the sale is made by a taxable person in the ordinary course of business."

I think that had section 5 been drafted in this way at the time the hearing below had occurred it would have forestalled any argument as to whether VAT applied to the importation of goods. In my view, however, the clear meaning of section 2 of the Act made the VAT chargeable on the importation of goods into Grenada.

It was conceded that the appellant never presented any argument to the Court below on Section 2 of the Act and by this omission contributed to the failure to apply the provisions of section 2 of the Act. In the circumstances it seems inappropriate for any order to be made as to costs.

I would allow the appeal, set aside the judgment of the Court below and order that judgment be entered for the appellant with no order as to costs.

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DENNIS BYRON
Justice of Appeal

I concur.

....
NICHOLAS LIVERPOOL
Justice of Appeal

I concur.

....
SATROHAN SINGH
Justice of Appeal